IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.32 OF 1991

1. Jagannath Narayan Bhawasar

2. Bado Narayan Bhawasar

3. Ashok Narayan Bhawasar,

   Nos.1 to 3 R/o Bhawasar,
   Malegaon, Taluka Malegaon,
   District Nashik.

4. Shrikrishna Narayan Bhawasar,
   R/o Malegaon, Bhawasar Galli, ...Petitioners
   Taluka Malegaon, District (Ori.Opponents Nos.
   Nashik. 10(i),(ii),(iii)
   and No.11.

Versus

1. Jayaram Dala Patil,
   R/o Shriram Nagar, Sangmeshwar,
   Taluka Malegaon, District Nashik.

2. Gulab Dala Patil,
   since deceased through his heirs-

   (a) Kisan Gulab Patil
   (b) Hari Gulab Patil

   Nos.2(a) & 2(b) R/o
   Vijay Nagar, Malegaon,
   Taluka Malegaon, District
   Nashik.

3. Kautik Dala Patil

4. Baburao Deoram Patil,
   legal heir - Opponent No.5.

5. Smt.Sayabai W/o Deoram Patil,
   since deceased through her

legal heir Opponent No.4.

6. Prakash Awachit Patil

7. Smt.Kesharbai alias Kashibai
W/o Awachit Patil.

8. Smt.Bhagabai W/o Nathu Patil,
since deceased through her
legal heirs -

(a) Pandurang Nathu Sonawane
(b) Hiraman Nathu Sonawane
(c) Suresh Nathu Sonawane
(d) Arun Nathu Sonawane
(e) Raju Nathu Sonawane
(f) Nirmal Nathu Sonawane

Opponents Nos.8(a) to 8(f)
residents of Dapora, Taluka
Malegaon, District Nashik.

Nos.3 to 5 R/o Shriram Nagar,
Sangameshwar, Malegaon,
Taluka Malegaon, District
Nashik.

Nos.6 & 7 R/o Jalgaon
(Ravalgaon), Taluka
Malegaon, Dist.Nashik.

...Respondents
(No.1 Ori.Applicant
Nos.2(a) & (b) &
3 to 8 Original
Opponents Nos.2
to 9 and 11).

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Mr.N.S.Shastri for Petitioners.

Mr.M.V.Sali for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 6, 2004.

ORAL JUDGMENT

1. This Writ Petition takes exception to the Judgment and Order passed by the Maharashtra Revenue Tribunal at Bombay dated July 18, 1990 in Revision No.TEN.872 of 1986. Briefly stated, the land in question is agricultural land bearing Survey No.126 of Village Vadgaon, Taluka Malegaon, District Nasik. The predecessor of the Respondents one Sarubai wife of Shri Dala Patil was tenant in respect of the suit land on the tillers' day i.e. 1st April 1957. The Petitioners are the owners of the suit land. The predecessor of the Petitioners had taken out proceedings under Section 31 read with Section 29 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') for possession of the suit land on the ground of personal requirement. That application came to be dismissed on 10th March 1959. The order dismissing the application was allowed to become final. On the dismissal of this application by operation of law, the tenant became deemed purchaser of the suit land. On that basis, proceedings under Section 32G of the Act were commenced for determination of purchase price being

tenancy case No.17 of 1962. Those proceedings were, however, dropped as the tenant was found to be disabled person being widow. Later on, the landlord instituted proceedings under Section 14 read with Section 29(2) of the Act for possession of the suit land from the tenant on the ground of default. This case was numbered as tenancy case No.9 of 1967. The Tahsildar proceeded with the enquiry and found that the tenant was defaulter and therefore directed the tenant to pay the arrears, failing which, order of ejectment dated 31st July 1970 came to be passed. It is not in dispute that this order was not challenged by the tenant. Consequent to the order passed by the Tahsildar on 31st July 1970, Petitioners filed application for possession of the suit land against the heirs of the tenant in the year 1974 on the assertion that the tenant had failed to comply with the conditional order passed by the Tahsildar dated 31st July 1970. The Tahsildar was pleased to allow the application preferred by the Petitioners by order dated July 8, 1977 and directed handing over possession of the suit land to the Petitioners. Pursuant to the said order, possession of the suit

land has been taken over by the Petitioners on 4th August 1977. The Respondents 1 to 8 herein, however, filed appeal before the Sub-Divisional Officer challenging the order passed by the Tahsildar dated 8th July 1977. The Sub-Divisional Officer by decision dated December 31, 1981 confirmed the order passed by the Tahsildar and dismissed the appeal preferred by the Respondents. The Respondents thereafter carried the matter in Revision before the Maharashtra Revenue Tribunal, which in turn, by the impugned Judgment and Order dated July 18, 1990, was pleased to allow the Revision Application by setting aside all the orders passed by the Authorities below on the reasoning that after the dismissal of the application under Section 31 of the Act preferred by the landlord on 10th March 1959, the tenant had become deemed purchaser and in that eventuality, the ground of default as invoked by the landlord against the tenant for possession in respect of the suit land for the subsequent period was unavailable and all the steps and proceedings taken thereafter on that basis being void-ab-initio and nullity, the same will have to be ignored. Accordingly, the

Tribunal allowed the Revision preferred by the Respondents and directed restoration of possession of the suit land to the Respondents. By the same order, the Tribunal has further directed Tahsildar to initiate proceedings under Section 32G of the Act for determination of the purchase price of the suit land. This decision of the Tribunal is subject matter of challenge in the present Petition.

2. The only argument canvassed on behalf of the Petitioners is that even if the orders passed by the Tahsildar in proceedings under Section 14 read with Sections 25 and 29 of the Act (T.N.Case No.6 of 1967) were nullity, even so, the said order having been allowed to attain finality, would bind the parties inter se and cannot be ignored, for which reason, it was not open to the Tribunal to set-aside that decision and direct restoration of possession of the suit lands to the Respondents. To buttress this submission, reliance was placed on the decision of the Apex Court reported in **AIR 1996 SC 906 in the case of State of Kerala vs. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil**

(dead) & Ors.

3. On the other hand, Counsel for the Respondents has supported the view taken by the Tribunal and submits that no interference is warranted at the instance of this Court in exercise of writ jurisdiction. Learned Counsel submits that the legal position has been rightly applied by the Tribunal to remedy the manifest error committed by the Authorities below. Mr.Sali for the Respondents has placed reliance on the decision of the Apex Court in the case of **Amrit Bhikaji Kale & Ors. vs. Kashinath Janardhan Trade & Anr. reported in AIR 1983 SC 643** to contend that in similar situation while considering the very enactment, the Apex Court declined to interfere with the order passed by the High Court, which had taken the view that all proceedings in similar situation were void-ab-initio and without jurisdiction and nullity in the eyes of Law. Learned Counsel has strenuously relied on this decision, as the facts of that case are very much similar to the fact situation of the present case. He submits that the argument as is canvassed in this case was also

advanced before the Apex Court that validity of previous orders were not questioned, however, the same did not find favour with the Apex Court.

4. Having considered the rival submissions, I have no hesitation in observing that this Petition is devoid of merits. Indeed, the Petitioners have relied on the decision of the Apex Court in **State of Kerala (Supra)** to contend that the orders though null and void, cannot be treated as nonest, and ignored. What is, however, overlooked by the learned Counsel is that the Apex Court has observed that there are degrees of invalidity, depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise. In cases where the invalidity was fundamental, then obviously the argument that the order has become final, cannot be of any avail. It is precisely this principle which has been applied in the decision of **Amrit Bhikaji Kale's case (Supra)**. It was found in that case that the landlord had not incurred any disability on the tillers' day i.e. 1st April 1957 and if it was so, the tenant would become deemed purchaser by operation of law, without requiring to do anything

further. It is well settled that if the tenant is a disabled person, that only enables the tenant to purchase the land at a later date in terms of provisions contained in Section 32F of the Act. The date of purchase is deferred only if the disabled tenant intends to avail of the remedy provided under Section 32F of the Act; And Section 32F of the Act cannot be pressed into service by the landlord to invoke remedy under Section 14 read with Section 29 of the Act on the ground of default after the tenant has become a deemed purchaser by operation of law as a consequence of dismissal of the landlord's application for possession on the ground of reasonable requirement under Section 31 of the Act. It is settled position that no landlord can avail of both provisions (see 1975 (LXXVIII Bom.L.R.427 Mago Dattu Mahajan vs. Yeshodabai H.Mahajan). In **Amrit Bhikaji Kale's case (Supra)**, our High Court, upon construing the relevant provisions of the Act, had taken the view that all orders passed by the lower Authorities overlooking the statutory or legal position, will have to be treated as wholly null and void and nonest in the eyes of Law. That view taken by this

Court has found favour with the Apex Court in **Amrit Bhikaji Kale's case (Supra)**. Accordingly, the matter at hand, will be governed by the principle enunciated by the Apex Court in **Amrit Bhikaji Kale's case (Supra)** which, to my mind, is directly on the point. Accordingly, there is no infirmity in the view taken by the Tribunal in setting-aside all the orders passed by the Authorities below, which overlooked the fact that the tenant became deemed purchaser by operation of law upon dismissal of the application preferred by the landlord under Section 31 of the Act on 10th March 1959; inasmuch as the landlord did not suffer any disability on the tillers' day, nor on the date of rejection of his application for possession of the land for bonafide requirement on 10th March 1959. Moreover, the tenant; a widow, though, was not "disqualified" to purchase the land as deemed purchaser at the relevant time, for Section 32F only enabled her to postpone the purchase. Accordingly, after rejection of application for possession on the ground of personal requirement on 10th March 1959, in law, it was not open to the landlord to terminate the tenancy on the ground of

default.

5. Accordingly this Petition fails. The same is dismissed with no order as to costs.

A.M.KHANWILKAR, J.